

S.B.Civil Writ Petition NO.224/2005
Narayan Ram & Ors.

vs

Human Ram & Ors.

DATE OF ORDER : - 13.1.2005

HON'BLE MR. PRAKASH TATIA,J.

Mr. G.R.Punia, for the petitioner.

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Heard learned counsel for the petitioner.

The petitioners are aggrieved against the order of the trial court dated 8th Dec., 2004 by which the petitioners' objection against the Commissioner report dated 23rd Nov., 2001 was dismissed by the trial court and the trial court refused to send the Commissioner again.

According to learned counsel for the petitioner, the Commissioner did not give any notice to the petitioners and prepared the report at the back of the petitioners and thereby the Commissioner violated the statutory provision of law of giving notice to the petitioners. It is also submitted that the Commissioner report itself is no reliable document because by the report, which was submitted by the Commissioner, the factual position is not come on record correctly.

It is also submitted that the dispute is relating to the subject for which appropriate order can be passed only by the Revenue Court and not by the Civil Court.

I considered the submissions of learned counsel for the petitioners. Since the Commissioner report is not the conclusive proof and the court has only rejected the petitioners' application for setting aside the Commissioner report and for sending a fresh Commission, therefore, the petitioners are not going to suffer and petitioners' all rights to show that by the report, which was submitted by the Commissioner, no benefit goes in favour of the non-petitioners-plaintiff. While considering the application for grant of temporary injunction, the trial court naturally, examine the Commissioner report itself and not the objection for quashing the Commissioner Report. The objection for quashing the Commissioner report can be dismissed on various grounds, but that does not mean that the court has determined the Commissioner report to be representing the true and correct picture of the site because at that stage of deciding the objection of the Commissioner report, the question of examining the Commissioner report may not arise.

However, the petitioners submitted that notices were not served upon the petitioners and, therefore, the Commissioner report may be

set aside. The trial court found that the petitioners did not submit any affidavit in support of the objection petition and, therefore, the objection cannot be accepted. Further so far as notices were not served upon the petitioners or not are concerned, this court cannot examine while exercising powers under Section 227 of the Constitution of India and the petitioners have remedy to have objection in appeal against any order, if passed against the petitioners after relying upon the Commissioner report on injunction application. Therefore, there is no reason to entertain the writ petition of the petitioners on this ground.

In view of the above, I do not find any merit in this writ petition and the same is hereby dismissed.

(Prakash Tatia), J.

c.p.goyal/-